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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 64

**Introduced by Assembly Members Krekorian and Bass, Bass, and
Fuentes**

(Principal coauthor: Senator Simitian)

(Coauthors: Senators Leno and Padilla)

December 9, 2008

An act to add Article 7.3 (commencing with Section 12078) to Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code, to amend Sections 25107, 25123, 25324, 25333, 25500, 25501, 25502, 25503, 25516, 25517, 25531, 25540.6, 25740, 25740.5, 25741, and 25742 of, and to add Section 25108.5 to, the Public Resources Code, and to amend Sections 454.5 and 1002 of, to amend and repeal Section 387 of, to add Sections 399.23 and 1004.5 to, to add Chapter 4.5 (commencing with Section 950) to Part 1 of Division 1 of, and to repeal Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 Section 705 to the Fish and Game Code, to amend Sections 25740.5, 25742, 25746, 25747, and 25751 of, and to add Section 25500.1 to, the Public Resources Code, and to amend Sections 399.2.5 and 454.5 of, to add Sections 399.13, 399.26, and 1005.1 to, and to

repeal and add Section 399.14 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 64, as amended, Krekorian. Energy: renewable energy resources: generation and transmission.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law requires the PUC to require the state's 3 largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission). Existing law establishes the Renewable Resource Trust Fund as a fund that is continuously appropriated, with certain exceptions for administrative expenses, in the State Treasury and requires that certain moneys collected to support renewable energy resources through the public goods charge are deposited into the fund and authorizes the Energy Commission to expend the moneys pursuant to the Renewable Energy Resources Program.

This bill would make conforming changes to terms used in the Renewable Energy Resources Program statutes that would be made by SB 14 of the 2009–10 Regular Session.

(2) The Public Utilities Act imposes various duties and responsibilities on the PUC with respect to the purchase of electricity and requires the PUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program (RPS program). The RPS program requires that a retail seller of

electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year. The RPS program requires the PUC to implement annual procurement targets for each retail seller to increase its total procurement of electricity generated by eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales of electricity are procured from eligible renewable energy resources no later than December 31, 2010. Existing law requires the PUC to make a determination of the existing market cost for electricity, which PUC decisions call the market price referent, and to limit an electrical corporation's obligation to procure electricity from eligible renewable energy resources, that exceeds the market price referent, to an amount collected through the renewable energy public goods charge.

This bill would delete an existing requirement that the PUC adopt flexible rules for compliance for retail sellers. The bill would require the PUC to direct each electrical corporation to prepare a renewable energy procurement plan that includes certain matter and to review and update the plan. The bill would, to the extent feasible, require that the renewable energy procurement plan be proposed, reviewed, and adopted by the PUC pursuant to the general procurement plan process. The bill would require that an electrical corporation's proposed procurement plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement targets pursuant to the RPS program. The bill would authorize an electrical corporation to apply to the PUC for approval to construct, own, and operate an eligible renewable energy resource and require the PUC to approve the application if certain conditions are met, until corporation owned and operated resources provide 8.5% of the corporation's anticipated retail sales.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the PUC is a crime.

Because certain provisions of this bill are within the act and require action by the PUC to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

(3) *The Public Utilities Act prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the PUC a certificate that the present or future public convenience and necessity require or will require that construction, termed a certificate of public convenience and necessity. Existing law requires the PUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the PUC finds that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the RPS program. Existing law requires the PUC, upon finding that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the RPS, to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission (FERC) are fully reflected in any retail rates established by the PUC.*

This bill would require the PUC to issue a decision on an application for a certificate of public convenience and necessity within 18 months of the filing of a completed application under specified circumstances. The bill would require the PUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the PUC finds that new transmission facilities are reasonably necessary or appropriate to facilitate achievement of the renewables portfolio standard. The bill would require the PUC to provide assurance of the eligibility for recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of transmission facilities in certain circumstances and to allow recovery in retail rates of any increase in transmission costs if not approved by the Federal Energy Regulatory Commission if the PUC determines the costs were prudently incurred pursuant to a specified law.

(4) *Existing law establishes the Department of Fish and Game in the Natural Resources Agency, and generally charges the department with the administration and enforcement of the Fish and Game Code.*

This bill would require the department to establish an internal division with the primary purpose of performing comprehensive planning and environmental compliance services with priority given to projects involving the building of eligible renewable energy resources.

(5) *The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of an Independent System Operator (ISO). Existing law requires the ISO to ensure efficient use and reliable operation of the transmission grid consistent with achieving planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the American Electric Reliability Council. Pursuant to existing law, the ISO's tariffs are required to be approved by the FERC.*

This bill would require the ISO and other California balancing authorities to work cooperatively to integrate and interconnect eligible renewable energy resources to the transmission grid by the most efficient means possible with the goal of minimizing the impact and cost of new transmission facilities needed to meet both reliability needs and the renewables portfolio standard procurement requirements, and to accomplish this in a manner that respects the ownership, business, and dispatch models for transmission facilities owned by electrical corporations, local publicly owned electric utilities, joint power agencies, and merchant transmission companies.

(6) *The bill would require the Energy Commission, by July 1, 2010, to update previously conducted studies relating to determining the effective load carrying capacity of wind and solar energy resources on the electrical grid. The bill would require the PUC to use those values in establishing the contribution of those resources toward meeting specified resource adequacy requirements.*

(7) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

(8) *The provisions of the bill would only become operative if the bill and SB 14 of the 2009–10 Regular Session are both enacted and become effective on or before January 1, 2010.*

~~(1) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission (PUC) with respect to the purchase of electricity and requires the PUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program (RPS program). The RPS program requires that a retail seller of electricity, including electrical corporations, community~~

~~choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires the PUC to implement annual procurement targets for each retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify eligible renewable energy resources and to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers. Under existing law the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard for the utility that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.~~

~~This bill would recast the RPS program, to be operative on January 1, 2011, and which the commission would enforce with respect to a retail seller once that retail seller procures 20% of its retail sales from eligible renewable energy resources. Upon the recast RPS program becoming operative, the bill would require that a retail seller and a local publicly owned electric utility: (1) procure at least 23% of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2014, (2) procure at least 27% of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2017, and (3) procure at least 33% of the electricity delivered to its retail customers from eligible renewable energy resources by December 31, 2020. The PUC would be responsible for implementing these requirements for retail sellers, while the governing board would be responsible for implementing these requirements for a local publicly owned electric utility. The bill would require the PUC to establish procurement targets for retail sellers that are sufficient to reach the above-stated requirements. The bill would require that an electrical corporation's renewable energy procurement plan include a process that provides criteria for the rank ordering and selection of eligible~~

~~renewable energy resources to comply with the above-stated procurement requirements so that the corporation's total renewables portfolio benefits ratepayers. The bill would require the PUC to annually establish and adopt a benchmark price for electricity generated by an eligible renewable energy resource, for terms corresponding to the length of contracts, in consideration of specified matter, and would prohibit the PUC from requiring a retail seller to procure additional electricity from eligible renewable energy resources if the net annualized costs, as specified, expended above the benchmark price exceeds 5% of the retail seller's total system annual revenue requirements, as defined. The bill would require the governing board of a local publicly owned electric utility to implement a similar limitation for the utility. The bill would revise existing law with respect to the use of renewable energy credits to meet the renewables portfolio standard procurement requirements. The bill would authorize the PUC to modify certain requirements for an electrical corporation with 60,000 or fewer customer accounts in the state that serves retail end-use customers outside the state and provides that a public utility district that receives all of its electricity from hydroelectric generation pursuant to a preference right created by a specified federal law is in compliance with the renewables portfolio standard.~~

~~(2) Existing law requires the PUC to require the state's 3 largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources. Existing law establishes the Renewable Resource Trust Fund in the State Treasury and requires that certain moneys collected to support renewable energy resources through the public goods charge are deposited into the fund and authorizes the Energy Commission to expend the moneys pursuant to the Renewable Energy Resources Program. The program states the intent of the Legislature to increase the amount of electricity generated from eligible renewable energy~~

resources per year so that amount equals at least 20% of total retail sales of electricity in California per year by December 31, 2010.

This bill would revise the Renewable Energy Resources Program to state the intent of the Legislature to increase the amount of electricity generated from eligible renewable energy resources per year, so that it equals at least 20% of total retail sales of electricity in California per year by December 31, 2010, 23% of total retail sales of electricity in California per year by December 31, 2014, 27% of total retail sales of electricity in California per year by December 31, 2017, and 33% of total retail sales of electricity in California per year by December 31, 2020. The bill would revise the definitions applicable to the Renewable Energy Resources Program to incorporate the definition of an eligible renewable energy resource from the RPS program, would define what is a “new” and “existing” eligible renewable energy resource, would delete certain unneeded defined terms, and would make other conforming changes.

(3) This bill would establish the Energy Planning and Infrastructure Coordinating Committee (EPIC committee), composed of specified members, that would be required to use existing resources and the authority of the state entities represented by the voting members to coordinate the actions of the state, make policy recommendations, and develop a strategic plan to achieve a 23% renewables portfolio standard by December 31, 2014, a 27% renewables portfolio standard by December 31, 2017, and a 33% renewables portfolio standard by December 31, 2020. The bill would require that the strategic plan, among other things, designate and rank renewable energy development (RED) zones with high concentrations of high-quality renewable energy resources, to designate and rank transmission corridors needed to deliver electricity generated in RED zones to load and any additional electrical transmission and distribution upgrades that are prudent and desirable in order to ensure system reliability, and include a timeline of stages required to meet the 25% and 33% renewables portfolio standard requirements. The bill would authorize the EPIC committee to incorporate in the strategic plan the results reached as a result of the Renewable Energy Transmission Initiative (RETI) collaborative stakeholder planning process initiated as a joint effort among the PUC, Energy Commission, and the Independent System Operator. The bill would require the EPIC committee to facilitate coordinated permit and certification review agreements between the PUC, Energy Commission, Department of Fish and Game, State Air Resources Board, State Water

~~Resources Control Board, and other agencies responsible for environmental reviews, including, to the extent feasible, local and federal governmental entities. The bill would require the EPIC committee to direct the Energy Commission to prepare a program environment impact report (PEIR) pursuant to the California Environmental Quality Act (CEQA) for each RED zone and require that the EPIC committee approve the PEIR before the Energy Commission may certify completion of the PEIR.~~

~~(4) Existing law requires the Energy Commission to adopt a strategic plan for the state's electrical transmission grid using existing resources, to be included in the integrated energy policy report adopted on November 1, 2005, which identifies and recommends actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in electrical load and generation, including renewable resources, energy efficiency, and other demand reduction measures. Existing law authorizes the Energy Commission to designate a transmission corridor zone on its own motion or by application of a person who plans to construct a high-voltage electric transmission line within the state. Existing law provides that the designation of a transmission corridor shall serve to identify a feasible corridor where a future transmission line can be built that is consistent with the state's needs and objectives as set forth in the strategic plan adopted by the Energy Commission. Existing law provides that the designation of a transmission corridor zone is subject to the requirements of the CEQA and prescribes procedures for the designation of a transmission corridor zone, including publication of the request for designation and request for comments, coordination with federal agencies and California Native American tribes, informational hearings, and requirements for a proposed decision.~~

~~This bill would require the Energy Commission to adopt, and, as needed, update a strategic plan for the state's electrical transmission grid using existing resources, to be included in the next integrated energy policy report, which identifies and recommends actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in electrical load and generation, including achieving the renewables portfolio standard procurement requirements, energy efficiency, and other demand reduction measures. The bill would authorize the Energy Commission to separately adopt a strategic plan to facilitate achieving the renewables portfolio standard requirements. The bill would require that any strategic plan adopted by the Energy~~

Commission be consistent with the strategic plan adopted by the EPIC committee. The bill would make conforming changes to the transmission corridor designations statutes:

~~(5) The existing federal Energy Policy Act of 2005 requires the federal Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior, in consultation with the Federal Energy Regulatory Commission (FERC), states, and tribal or local units of interested persons, to designate corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on federal land in the 11 contiguous western states, including California, to perform any environmental reviews that may be required to complete the designation of corridors, and to incorporate the designated corridors into the relevant agency land use and resource management plans or equivalent plans. The Energy Policy Act of 2005 additionally requires the federal secretaries, in consultation with the FERC, affected utility industries, and other interest parties, to establish procedures that ensure that additional corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on federal land are promptly identified and designated as necessary and to expedite applications to construct or modify oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities within corridors, taking into account prior analysis and environmental reviews.~~

~~This bill would require the Energy Commission to confer with the federal secretaries and the FERC to ensure that the transmission corridors designated by the Energy Commission are identified and designated as necessary pursuant to the federal Energy Policy Act of 2005.~~

~~(6) The existing Warren-Alquist State Energy Resources Conservation and Development Act grants the Energy Commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. This authority extends to any alteration, replacement, or improvement of equipment that results in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant or an increase of 25% in the peak operating voltage or peak kilowatt capacity of an existing electric transmission line. Existing law prohibits the construction of any thermal powerplant or facilities appurtenant thereto or modification of any existing thermal powerplant and appurtenant facility without first obtaining certification from the Energy Commission.~~

~~This bill would grant the Energy Commission the exclusive authority to certify an eligible renewable energy resource, as defined, with a generating capacity of 5 megawatts or more, except for a facility for which a building permit application or other request for governmental approval was filed on or before December 31, 2009. The bill would make other conforming changes to the act.~~

~~(7) The existing Public Utilities Act prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the PUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). The act requires that the PUC consider certain factors in determining whether to issue a certificate of convenience and necessity, including community values; recreational and park areas, historical and aesthetic values, and influence on the environment, but requires that the issuance of a certificate by the Energy Commission for a thermal powerplant and facilities appurtenant thereto, pursuant to the above-described provisions, is conclusive as to all matters determined thereby when the PUC is determining whether to issue a certificate of public convenience and necessity.~~

~~The bill would make the issuance of a certificate by the Energy Commission for an eligible renewable energy resource, pursuant to the above-described provisions, conclusive as to all matters determined thereby when the PUC is determining whether to issue a certificate of public convenience and necessity. The bill would authorize the PUC, with the concurrence of the Division of Ratepayer Advocates, to accept as a rebuttable presumption, a determination of the ISO, made as part of its transmission planning process, that a transmission project is needed to connect to renewable generation. For any application for a certificate of public convenience and necessity to construct or modify an electrical transmission line, a substantial purpose of which is to access electricity generated by eligible renewable energy resources, the bill would require the PUC to establish a schedule for review of the application and to employ staffing and other resources sufficient to produce a decision on whether to issue the certificate, or refuse to issue it, within 12 months of receiving the completed application.~~

~~(8) Under existing law, a violation of the Public Utilities Act or an order or direction of the PUC is a crime. Because some of the provisions of this bill would require an order or other action of the PUC to~~

~~implement its provisions, and a violation of that order or action would be a crime, the bill would impose a state-mandated local program by creating a new crime. By placing additional requirements upon local publicly owned electric utilities, which are entities of local government, and new requirements upon city and county governments, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 705 is added to the Fish and Game Code,
2 to read:

3 705. (a) For purposes of this section, “eligible renewable
4 energy resources” has the same meaning as in the California
5 Renewables Portfolio Standard Program (Article 16 (commencing
6 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the
7 Public Utilities Code).

8 (b) The department shall establish an internal division with the
9 primary purpose of performing comprehensive planning and
10 environmental compliance services with priority given to projects
11 involving the building of eligible renewable energy resources.

12 (c) The internal division shall ensure the timely completion of
13 plans pursuant to the Natural Community Conservation Planning
14 Act (Chapter 10 (commencing with Section 2800) of Division 3).

15 SEC. 2. Section 25500.1 is added to the Public Resources Code,
16 to read:

17 25500.1. Nothing in this chapter exempts an eligible renewable
18 energy resource, as defined in Article 16 (commencing with Section
19 399.11) of the Public Utilities Code, from the Fish and Game Code,
20 including Division 3 (commencing with Section 2000) of the Fish
21 and Game Code.

22 SEC. 3. Section 25740.5 of the Public Resources Code is
23 amended to read:

1 25740.5. (a) The commission shall optimize public investment
2 and ensure that the most cost-effective and efficient investments
3 in renewable energy resources are vigorously pursued.

4 (b) The commission's long-term goal shall be a fully competitive
5 and self-sustaining supply of electricity generated from renewable
6 sources.

7 (c) The program objective shall be to increase, in the near term,
8 the quantity of California's electricity generated by ~~in-state~~
9 ~~renewable electricity generation facilities~~ *electrical generation*
10 *facilities located in this state*, while protecting system reliability,
11 fostering resource diversity, and obtaining the greatest
12 environmental benefits for California residents.

13 (d) An additional objective of the program shall be to identify
14 and support emerging renewable technologies in distributed
15 generation applications that have the greatest near-term commercial
16 promise and that merit targeted assistance.

17 (e) The Legislature recommends allocations among all of the
18 following:

19 (1) Rebates, buydowns, or equivalent incentives for emerging
20 renewable technologies.

21 (2) Customer education.

22 (3) Production incentives for reducing fuel costs, that are
23 confirmed to the satisfaction of the commission, at solid fuel
24 biomass energy facilities in order to provide demonstrable
25 environmental and public benefits, including improved air quality.

26 (4) Solar thermal generating resources that enhance the
27 environmental value or reliability of the electrical system and that
28 require financial assistance to remain economically viable, as
29 determined by the commission. The commission may require
30 financial disclosure from applicants for purposes of this paragraph.

31 (5) Specified fuel cell technologies, if the commission makes
32 all of the following findings:

33 (A) The specified technologies have similar or better air
34 pollutant characteristics than renewable technologies in the report
35 made pursuant to Section 25748.

36 (B) The specified technologies require financial assistance to
37 become commercially viable by reference to wholesale generation
38 prices.

39 (C) The specified technologies could contribute significantly
40 to the infrastructure development or other innovation required to

1 meet the long-term objective of a self-sustaining, competitive
2 supply of electricity generated from renewable sources.

3 (6) Existing wind-generating resources, if the commission finds
4 that the existing wind-generating resources are a cost-effective
5 source of reliable energy and environmental benefits compared
6 with other ~~in-state renewable electricity generation facilities~~
7 *electrical generation facilities located in this state*, and that the
8 existing wind-generating resources require financial assistance to
9 remain economically viable. The commission may require financial
10 disclosure from applicants for the purposes of this paragraph.

11 (f) Notwithstanding any other provision of law, moneys
12 collected for renewable energy pursuant to Article 15 (commencing
13 with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the
14 Public Utilities Code shall be transferred to the Renewable
15 Resource Trust Fund. Moneys collected between January 1, 2007,
16 and January 1, 2012, shall be used for the purposes specified in
17 this chapter.

18 *SEC. 4. Section 25742 of the Public Resources Code is*
19 *amended to read:*

20 25742. (a) Twenty percent of the funds collected pursuant to
21 the renewable energy public goods charge shall be used for
22 programs that are designed to achieve fully competitive and
23 self-sustaining existing ~~in-state renewable electricity generation~~
24 *facilities electrical generation facilities located in this state*, and
25 to secure for the state the environmental, economic, and reliability
26 benefits that continued operation of those facilities will provide
27 during the 2007–2011 investment cycle. Eligibility for production
28 incentives under this section shall be limited to those technologies
29 found eligible for funds by the commission pursuant to paragraphs
30 (3), (4), and (6) of subdivision (e) of Section 25740.5.

31 (b) Any funds used to support ~~in-state renewable electricity~~
32 *electrical generation facilities located in this state* pursuant to this
33 section shall be expended in accordance with the provisions of this
34 chapter.

35 (c) Facilities that are eligible to receive funding pursuant to this
36 section shall be registered in accordance with criteria developed
37 by the commission and those facilities shall not receive payments
38 for any electricity produced that has any of the following
39 characteristics:

1 (1) Is sold at monthly average rates equal to, or greater than,
2 the applicable target price, as determined by the commission.

3 (2) Is used onsite.

4 (d) (1) Existing facilities *located in this state* generating
5 electricity from biomass energy shall be eligible for funding and
6 otherwise considered ~~an in-state renewable electricity~~ *a renewable*
7 *electrical* generation facility only if they report to the commission
8 the types and quantities of biomass fuels used.

9 (2) The commission shall report the types and quantities of
10 biomass fuels used by each facility to the Legislature in the reports
11 prepared pursuant to Section 25748.

12 (e) Each existing facility seeking an award pursuant to this
13 section shall be evaluated by the commission to determine the
14 amount of the funds being sought, the cumulative amount of funds
15 the facility has received previously from the commission and other
16 state sources, the value of any past and current federal or state tax
17 credits, the facility's contract price for energy and capacity, the
18 prices received by similar facilities, the market value of the facility,
19 and the likelihood that the award will make the facility competitive
20 and self-sustaining within the 2007–2011 investment cycle. The
21 commission shall use this evaluation to determine the value of an
22 award to the public relative to other renewable energy investment
23 alternatives. The commission shall compile its findings and report
24 them to the Legislature in the reports prepared pursuant to Section
25 25748.

26 *SEC. 5. Section 25746 of the Public Resources Code is*
27 *amended to read:*

28 25746. (a) One percent of the money collected pursuant to the
29 renewable energy public goods charge shall be used in accordance
30 with this chapter to promote renewable energy and disseminate
31 information on renewable energy technologies, including emerging
32 renewable technologies, and to help develop a consumer market
33 for renewable energy and for small-scale emerging renewable
34 energy technologies.

35 (b) If the commission provides funding for a regional accounting
36 system to verify compliance with the renewable portfolio standard
37 by retail sellers, pursuant to subdivision (b) of Section ~~399.13~~
38 ~~399.25~~ of the Public Utilities Code, the commission shall recover
39 all costs from user fees.

1 *SEC. 6. Section 25747 of the Public Resources Code is*
2 *amended to read:*

3 25747. (a) The commission shall adopt guidelines governing
4 the funding programs authorized under this chapter, at a publicly
5 noticed meeting offering all interested parties an opportunity to
6 comment. Substantive changes to the guidelines may not be
7 adopted without at least 10 days' written notice to the public. The
8 public notice of meetings required by this subdivision may not be
9 less than 30 days. Notwithstanding any other provision of law, any
10 guidelines adopted pursuant to this chapter or ~~Section 399.13~~
11 399.25 of the Public Utilities Code, shall be exempt from the
12 requirements of Chapter 3.5 (commencing with Section 11340) of
13 Part 1 of Division 3 of Title 2 of the Government Code. The
14 Legislature declares that the changes made to this subdivision by
15 the act amending this section during the 2002 portion of the
16 2001–02 Regular Session are declaratory of, and not a change in
17 existing law.

18 (b) Funds to further the purposes of this chapter may be
19 committed for multiple years.

20 (c) Awards made pursuant to this chapter are grants, subject to
21 appeal to the commission upon a showing that factors other than
22 those described in the guidelines adopted by the commission were
23 applied in making the awards and payments. Any actions taken
24 by an applicant to apply for, or become or remain eligible and
25 registered to receive, payments or awards, including satisfying
26 conditions specified by the commission, shall not constitute the
27 rendering of goods, services, or a direct benefit to the commission.

28 (d) An award made pursuant to this chapter, the amount of the
29 award, and the terms and conditions of the grant are public
30 information.

31 *SEC. 7. Section 25751 of the Public Resources Code is*
32 *amended to read:*

33 25751. (a) The Renewable Resource Trust Fund is hereby
34 created in the State Treasury.

35 (b) The following accounts are hereby established within the
36 Renewable Resource Trust Fund:

- 37 (1) Existing Renewable Resources Account.
- 38 (2) Emerging Renewable Resources Account.
- 39 (3) Renewable Resources Consumer Education Account.

1 (c) The money in the fund may be expended, only upon
2 appropriation by the Legislature in the annual Budget Act, for the
3 following purposes:

4 (1) The administration of this article by the state.

5 (2) The state's expenditures associated with the accounting
6 system established by the commission pursuant to subdivision (b)
7 of Section ~~399.13~~ 399.25 of the Public Utilities Code.

8 (d) That portion of revenues collected by electrical corporations
9 for the benefit of in-state operation and development of existing
10 and new and emerging renewable resource technologies, pursuant
11 to Section 399.8 of the Public Utilities Code, shall be transmitted
12 to the commission at least quarterly for deposit in the Renewable
13 Resource Trust Fund pursuant to Section 25740.5. After setting
14 aside in the fund money that may be needed for expenditures
15 authorized by the annual Budget Act in accordance with
16 subdivision (c), the Treasurer shall immediately deposit money
17 received pursuant to this section into the accounts created pursuant
18 to subdivision (b) in proportions designated by the commission
19 for the current calendar year. Notwithstanding Section 13340 of
20 the Government Code, the money in the fund and the accounts
21 within the fund are hereby continuously appropriated to the
22 commission without regard to fiscal year for the purposes
23 enumerated in this chapter.

24 (e) Upon notification by the commission, the Controller shall
25 pay all awards of the money in the accounts created pursuant to
26 subdivision (b) for purposes enumerated in this chapter. The
27 eligibility of each award shall be determined solely by the
28 commission based on the procedures it adopts under this chapter.
29 Based on the eligibility of each award, the commission shall also
30 establish the need for a multiyear commitment to any particular
31 award and so advise the Department of Finance. Eligible awards
32 submitted by the commission to the Controller shall be
33 accompanied by information specifying the account from which
34 payment should be made and the amount of each payment; a
35 summary description of how payment of the award furthers the
36 purposes enumerated in this chapter; and an accounting of future
37 costs associated with any award or group of awards known to the
38 commission to represent a portion of a multiyear funding
39 commitment.

1 (f) The commission may transfer funds between accounts for
2 cashflow purposes, provided that the balance due each account is
3 restored and the transfer does not adversely affect any of the
4 accounts.

5 (g) The Department of Finance shall conduct an independent
6 audit of the Renewable Resource Trust Fund and its related
7 accounts annually, and provide an audit report to the Legislature
8 not later than March 1 of each year for which this article is
9 operative. The Department of Finance's report shall include
10 information regarding revenues, payment of awards, reserves held
11 for future commitments, unencumbered cash balances, and other
12 matters that the Director of Finance determines may be of
13 importance to the Legislature.

14 *SEC. 8. Section 399.2.5 of the Public Utilities Code is amended*
15 *to read:*

16 399.2.5. (a) ~~Notwithstanding any other provision in Sections~~
17 ~~1001 to 1013, inclusive, an application of an electrical corporation~~
18 ~~for a certificate authorizing the construction of new transmission~~
19 ~~facilities shall be deemed to be~~ *is necessary to the provision of*
20 ~~electric service for purposes of any determination made under~~
21 ~~Section 1003 if the commission finds that the new facility is~~
22 *reasonably necessary or appropriate to facilitate achievement of*
23 ~~the renewable power goals~~ *renewables portfolio standard*
24 ~~established in Article 16 (commencing with Section 399.11).~~

25 (b) With respect to a transmission facility described in
26 subdivision (a), the commission shall take all feasible actions to
27 ensure that the transmission rates established by the Federal Energy
28 Regulatory Commission are fully reflected in any retail rates
29 established by the commission. These actions shall include, ~~but~~
30 ~~are not limited to~~ *all of the following:*

31 (1) Making findings, where supported by an evidentiary record,
32 that those transmission facilities provide benefit to the transmission
33 network and are *reasonably necessary or appropriate* to facilitate
34 the achievement of the renewables portfolio standard established
35 in Article 16 (commencing with Section 399.11).

36 (2) Directing the utility to which the generator will be
37 interconnected, where the direction is not preempted by federal
38 law, to seek the recovery through general transmission rates of the
39 costs associated with the transmission facilities.

1 (3) Asserting the positions described in paragraphs (1) and (2)
2 to the Federal Energy Regulatory Commission in appropriate
3 proceedings.

4 (4) ~~Allowing~~ *Providing assurance, prior to a determination of*
5 *rate recovery by the Federal Energy Regulatory Commission*
6 *(FERC) of those costs that are subject to FERC jurisdiction, of*
7 *the eligibility for recovery in retail rates of any increase in*
8 *transmission costs incurred by an electrical corporation resulting*
9 *from the construction of the transmission facilities that are not*
10 *approved for recovery in transmission rates by the Federal Energy*
11 *Regulatory Commission after the commission determines that the*
12 *costs were prudently incurred in accordance with subdivision (a)*
13 *of Section 454.*

14 (5) *Allowing recovery in retail rates of any increase in*
15 *transmission costs if the FERC does not approve recovery of those*
16 *costs in the rates that are subject to FERC jurisdiction after the*
17 *commission determines that the costs were prudently incurred in*
18 *accordance with subdivision (a) of Section 454.*

19 (c) (1) *The commission shall approve an advice letter seeking*
20 *assurance of cost recovery pursuant to paragraph (4) of*
21 *subdivision (b), if either of the following is true:*

22 (A) *The new transmission line or facility is an upgrade of an*
23 *existing transmission line or facility, or is a new facility within*
24 *either an existing transmission right-of-way or a transmission*
25 *corridor zone that has been designated by the Energy Commission*
26 *pursuant to Section 25331 of the Public Resources Code, and is*
27 *consistent with the priority transmission projects in the conceptual*
28 *transmission plan in the final Phase 3 report produced by the*
29 *public collaborative stakeholder planning process known as the*
30 *Renewable Energy Transmission Initiative (RETI).*

31 (B) *Not less than 50 percent of the planned use for the capacity*
32 *of the new transmission line or facility is for interconnecting*
33 *eligible renewable energy resources, as determined by the*
34 *Independent System Operator or an electrical corporation, and*
35 *all interconnection requests for that transmission line or facility*
36 *are for generation facilities that comply with the greenhouse gases*
37 *emission performance standard established pursuant to Chapter*
38 *3 (commencing with Section 8340) of Division 4.1.*

39 (2) *Approval of an advice letter pursuant to paragraph (1) is*
40 *not binding upon the commission in making its determination*

1 *whether or not to approve an application for a certificate of public*
2 *convenience and necessity pursuant to Chapter 5 (commencing*
3 *with Section 1001).*

4 *SEC. 9. Section 399.13 is added to the Public Utilities Code,*
5 *to read:*

6 *399.13. (a) (1) The commission shall direct each electrical*
7 *corporation to prepare a renewable energy procurement plan that*
8 *includes the matter in paragraph (3), to satisfy its obligations*
9 *under the renewables portfolio standard. To the extent feasible,*
10 *this procurement plan shall be proposed, reviewed, and adopted*
11 *by the commission as part of, and pursuant to, a general*
12 *procurement plan process. The commission shall require each*
13 *electrical corporation to review and update its renewable energy*
14 *procurement plan as it determines to be necessary.*

15 *(2) The commission shall adopt, by rulemaking, all of the*
16 *following:*

17 *(A) A process that provides criteria for the rank ordering and*
18 *selection of least-cost and best-fit eligible renewable energy*
19 *resources to comply with the California Renewables Portfolio*
20 *Standard Program obligations on a total cost basis. This process*
21 *shall take into account all of the following:*

22 *(i) Estimates of indirect costs associated with needed*
23 *transmission investments and ongoing electrical corporation*
24 *expenses resulting from integrating and operating eligible*
25 *renewable energy resources.*

26 *(ii) The cost impact of procuring the eligible renewable energy*
27 *resources on the electrical corporation's electricity portfolio.*

28 *(iii) The viability of the project to construct and reliably operate*
29 *the eligible renewable energy resource, including the developer's*
30 *experience, the feasibility of the technology used to generate*
31 *electricity, and the risk that the facility will not be built, or that*
32 *construction will be delayed, with the result that electricity will*
33 *not be delivered as required by the contract.*

34 *(B) Rules permitting retail sellers to apply excess procurement*
35 *in one year to subsequent years.*

36 *(C) Standard terms and conditions to be used by all electrical*
37 *corporations in contracting for eligible renewable energy*
38 *resources, including performance requirements for renewable*
39 *generators. A contract for the purchase of electricity generated*
40 *by an eligible renewable energy resource shall, at a minimum,*

1 *include the renewable energy credits associated with all electricity*
2 *generation specified under the contract. The standard terms and*
3 *conditions shall include the requirement that, no later than six*
4 *months after the commission's approval of an electricity purchase*
5 *agreement entered into pursuant to this article, the following*
6 *information about the agreement shall be disclosed by the*
7 *commission: party names, resource type, project location, and*
8 *project capacity.*

9 *(D) An appropriate minimum margin of procurement above the*
10 *minimum procurement level necessary to comply with the*
11 *renewables portfolio standard to mitigate the risk that renewable*
12 *projects planned or under contract are delayed or canceled.*
13 *Nothing in this paragraph shall preclude an electrical corporation*
14 *from voluntarily proposing a margin of procurement above the*
15 *appropriate minimum margin established by the commission.*

16 *(3) Consistent with the goal of increasing California's reliance*
17 *on eligible renewable energy resources, the renewable energy*
18 *procurement plan submitted by an electrical corporation shall*
19 *include all of the following:*

20 *(A) An assessment of annual or multiyear portfolio supplies and*
21 *demand to determine the optimal mix of eligible renewable energy*
22 *resources with deliverability characteristics that may include*
23 *peaking, dispatchable, baseload, firm, and as-available capacity.*

24 *(B) Potential compliance delays related to the conditions*
25 *described in paragraph (4) of subdivision (b) of Section 399.15.*

26 *(C) A bid solicitation setting forth the need for eligible*
27 *renewable energy resources of each deliverability characteristic,*
28 *required online dates, and locational preferences, if any.*

29 *(D) A status update on the development schedule of all eligible*
30 *renewable resources currently under contract.*

31 *(E) Consideration of mechanisms for price adjustments*
32 *associated with the costs of key components for eligible renewable*
33 *energy resource projects with online dates more than 24 months*
34 *after the date of contract execution.*

35 *(F) An assessment of the risk that an eligible renewable energy*
36 *resource will not be built, or that construction will be delayed,*
37 *with the result that electricity will not be delivered as required by*
38 *the contract.*

39 *(4) In soliciting and procuring eligible renewable energy*
40 *resources, each electrical corporation shall offer contracts of no*

1 less than 10 years in duration, unless the commission approves of
2 a contract of shorter duration.

3 (5) In soliciting and procuring eligible renewable energy
4 resources for California-based projects, each electrical
5 corporation shall give preference to renewable energy projects
6 that provide environmental and economic benefits to communities
7 afflicted with poverty or high unemployment, or that suffer from
8 high emission levels of toxic air contaminants, criteria air
9 pollutants, and greenhouse gases.

10 (b) A retail seller may enter into a combination of long- and
11 short-term contracts for delivery of electricity and associated
12 renewable energy credits. The commission may authorize a retail
13 seller to enter into a contract of less than 10 years' duration with
14 an eligible renewable energy resource, if the commission has
15 established, for each retail seller, minimum quantities of eligible
16 renewable energy resources to be procured through contracts of
17 at least 10 years' duration.

18 (c) The commission shall review and accept, modify, or reject
19 each electrical corporation's renewable energy procurement plan
20 prior to the commencement of renewable procurement pursuant
21 to this article by an electrical corporation.

22 (d) Unless previously preapproved by the commission, an
23 electrical corporation shall submit a contract for the generation
24 of an eligible renewable energy resource to the commission for
25 review and approval consistent with an approved renewable energy
26 procurement plan. If the commission determines that the bid prices
27 are elevated due to a lack of effective competition among the
28 bidders, the commission shall direct the electrical corporation to
29 renegotiate the contracts or conduct a new solicitation.

30 (e) The commission shall establish milestones in the development
31 of the project to evaluate the potential for compliance with the
32 adopted renewable energy procurement plan and a set of actions
33 that will occur as a result of not meeting those milestones. These
34 actions may include, but shall not be limited to, determining a cure
35 period for failure to meet milestones, a suspense period on the
36 contract online date for events beyond the developer's control that
37 cause a failure to meet milestones, allowing other developers that
38 are prepared to go forward to move ahead of suspended contracts,
39 and the forfeiture of deposits.

1 (f) If an electrical corporation fails to comply with a commission
2 order adopting a renewable energy procurement plan, the
3 commission shall exercise its authority pursuant to Section 2113
4 to require compliance. The commission shall enforce comparable
5 penalties on any retail seller that is not an electrical corporation
6 that fails to meet the procurement targets established pursuant to
7 Section 399.15.

8 (g) (1) The commission may authorize a procurement entity to
9 enter into contracts on behalf of customers of a retail seller for
10 deliveries of eligible renewable energy resources to satisfy the
11 retail seller's renewables portfolio standard procurement
12 requirements. The commission may not require any person or
13 corporation to act as a procurement entity or require any party
14 to purchase eligible renewable energy resources from a
15 procurement entity.

16 (2) Subject to review and approval by the commission, the
17 procurement entity shall be permitted to recover reasonable
18 administrative and procurement costs through the retail rates of
19 end-use customers that are served by the procurement entity and
20 are directly benefiting from the procurement of eligible renewable
21 energy resources.

22 (h) Procurement and administrative costs associated with
23 contracts entered into by an electrical corporation for eligible
24 renewable energy resources pursuant to this article and approved
25 by the commission shall be deemed reasonable and shall be
26 recoverable in rates.

27 (i) Construction, alteration, demolition, installation, and repair
28 work on an eligible renewable energy resource that receives
29 production incentives pursuant to Section 25742 of the Public
30 Resources Code, including work performed to qualify, receive, or
31 maintain production incentives are "public works" for the purposes
32 of Chapter 1 (commencing with Section 1720) of Part 7 of Division
33 2 of the Labor Code.

34 SEC. 10. Section 399.14 of the Public Utilities Code is
35 repealed.

36 ~~399.14. (a) (1) The commission shall direct each electrical~~
37 ~~corporation to prepare a renewable energy procurement plan that~~
38 ~~includes the matter in paragraph (3), to satisfy its obligations under~~
39 ~~the renewables portfolio standard. To the extent feasible, this~~
40 ~~procurement plan shall be proposed, reviewed, and adopted by the~~

1 commission as part of, and pursuant to, a general procurement
2 plan process. The commission shall require each electrical
3 corporation to review and update its renewable energy procurement
4 plan as it determines to be necessary.

5 (2) The commission shall adopt, by rulemaking, all of the
6 following:

7 (A) A process for determining market prices pursuant to
8 subdivision (c) of Section 399.15. The commission shall make
9 specific determinations of market prices after the closing date of
10 a competitive solicitation conducted by an electrical corporation
11 for eligible renewable energy resources.

12 (B) A process that provides criteria for the rank ordering and
13 selection of least-cost and best-fit eligible renewable energy
14 resources to comply with the annual California Renewables
15 Portfolio Standard Program obligations on a total cost basis. This
16 process shall consider estimates of indirect costs associated with
17 needed transmission investments and ongoing utility expenses
18 resulting from integrating and operating eligible renewable energy
19 resources.

20 (C) (i) Flexible rules for compliance, including rules permitting
21 retail sellers to apply excess procurement in one year to subsequent
22 years or inadequate procurement in one year to no more than the
23 following three years. The flexible rules for compliance shall apply
24 to all years, including years before and after a retail seller procures
25 at least 20 percent of total retail sales of electricity from eligible
26 renewable energy resources.

27 (ii) The flexible rules for compliance shall address situations
28 where, as a result of insufficient transmission, a retail seller is
29 unable to procure eligible renewable energy resources sufficient
30 to satisfy the requirements of this article. Any rules addressing
31 insufficient transmission shall require a finding by the commission
32 that the retail seller has undertaken all reasonable efforts to do all
33 of the following:

34 (I) Utilize flexible delivery points.

35 (II) Ensure the availability of any needed transmission capacity.

36 (III) If the retail seller is an electric corporation, to construct
37 needed transmission facilities.

38 (IV) Nothing in this subparagraph shall be construed to revise
39 any portion of Section 454.5.

1 ~~(D) Standard terms and conditions to be used by all electrical~~
2 ~~corporations in contracting for eligible renewable energy resources,~~
3 ~~including performance requirements for renewable generators. A~~
4 ~~contract for the purchase of electricity generated by an eligible~~
5 ~~renewable energy resource shall, at a minimum, include the~~
6 ~~renewable energy credits associated with all electricity generation~~
7 ~~specified under the contract. The standard terms and conditions~~
8 ~~shall include the requirement that, no later than six months after~~
9 ~~the commission's approval of an electricity purchase agreement~~
10 ~~entered into pursuant to this article, the following information~~
11 ~~about the agreement shall be disclosed by the commission: party~~
12 ~~names, resource type, project location, and project capacity.~~

13 ~~(3) Consistent with the goal of procuring the least-cost and~~
14 ~~best-fit eligible renewable energy resources, the renewable energy~~
15 ~~procurement plan submitted by an electrical corporation shall~~
16 ~~include all of the following:~~

17 ~~(A) An assessment of annual or multiyear portfolio supplies~~
18 ~~and demand to determine the optimal mix of eligible renewable~~
19 ~~energy resources with deliverability characteristics that may include~~
20 ~~peaking, dispatchable, baseload, firm, and as-available capacity.~~

21 ~~(B) Provisions for employing available compliance flexibility~~
22 ~~mechanisms established by the commission.~~

23 ~~(C) A bid solicitation setting forth the need for eligible~~
24 ~~renewable energy resources of each deliverability characteristic,~~
25 ~~required online dates, and locational preferences, if any.~~

26 ~~(4) In soliciting and procuring eligible renewable energy~~
27 ~~resources, each electrical corporation shall offer contracts of no~~
28 ~~less than 10 years in duration, unless the commission approves of~~
29 ~~a contract of shorter duration.~~

30 ~~(5) In soliciting and procuring eligible renewable energy~~
31 ~~resources, each electrical corporation may give preference to~~
32 ~~projects that provide tangible demonstrable benefits to communities~~
33 ~~with a plurality of minority or low-income populations.~~

34 ~~(b) The commission may authorize a retail seller to enter into~~
35 ~~a contract of less than 10 years' duration with an eligible renewable~~
36 ~~energy resource, if the commission has established, for each retail~~
37 ~~seller, minimum quantities of eligible renewable energy resources~~
38 ~~to be procured either through contracts of at least 10 years' duration~~
39 ~~or from new facilities commencing commercial operations on or~~
40 ~~after January 1, 2005.~~

~~(e) The commission shall review and accept, modify, or reject each electrical corporation's renewable energy procurement plan prior to the commencement of renewable procurement pursuant to this article by an electrical corporation.~~

~~(d) The commission shall review the results of an eligible renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition among the bidders, the commission shall direct the electrical corporation to renegotiate the contracts or conduct a new solicitation.~~

~~(e) If an electrical corporation fails to comply with a commission order adopting a renewable energy procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. The commission shall enforce comparable penalties on any other retail seller that fails to meet annual procurement targets established pursuant to Section 399.15.~~

~~(f) (1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for deliveries of eligible renewable energy resources to satisfy annual renewables portfolio standard obligations. The commission may not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.~~

~~(2) Subject to review and approval by the commission, the procurement entity shall be permitted to recover reasonable administrative and procurement costs through the retail rates of end-use customers that are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.~~

~~(g) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article and approved by the commission shall be deemed reasonable per se, and shall be recoverable in rates.~~

~~(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives pursuant to Section 25742 of the Public~~

Resources Code, including work performed to qualify, receive, or maintain production incentives is “public works” for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 11. Section 399.14 is added to the Public Utilities Code, to read:

399.14. (a) (1) An electrical corporation may, pursuant to Chapter 5 (commencing with Section 1001), and in order to meet its renewables portfolio standard procurement requirements, apply to the commission for approval to construct, own, and operate an eligible renewable energy resource.

(2) If the proposed eligible renewable energy resource complies with the requirements of subdivision (b), the commission shall approve an application filed pursuant to paragraph (1), until the commission has approved applications for eligible renewable energy resources for the electrical corporation that, when constructed and operating, will provide 8.25 percent of the electrical corporation’s anticipated retail sales by December 31, 2020.

(3) The commission may approve additional applications for eligible renewable energy resources once the commission has approved sufficient applications for eligible renewable energy resources for the electrical corporation that, when constructed and operating, will provide 8.25 percent of the electrical corporation’s anticipated retail sales by December 31, 2020.

(b) The commission shall not approve any application by an electrical corporation pursuant to subdivision (a) unless both of the following conditions are met:

(1) The eligible renewable energy resource utilizes a viable technology at a reasonable cost.

(2) The eligible renewable energy resource provides comparable or superior value to ratepayers when compared to then recent or contemporaneous solicitations for generation provided by eligible renewable energy resources.

(c) In approving any application by an electrical corporation for approval to construct, own, and operate an eligible renewable energy resource, the commission shall apply traditional cost-of-service ratemaking, including reasonableness review after construction is completed.

1 *SEC. 12. Section 399.26 is added to the Public Utilities Code,*
2 *to read:*

3 399.26. (a) *In order for the state to meet the requirements of*
4 *the California Renewables Portfolio Standard Program,*
5 *substantially increased amounts of electricity generated by eligible*
6 *renewable energy resources must be integrated with, and*
7 *interconnected to, the transmission grid that is either owned by,*
8 *or under the operational control of, the local publicly owned*
9 *electric utilities and the transmission grid that is under the*
10 *operational control of the Independent System Operator.*

11 (b) *The Independent System Operator and the balancing*
12 *authority of each area in California shall do both of the following:*

13 (1) *Work cooperatively to integrate and interconnect eligible*
14 *renewable energy resources to the transmission grid by the most*
15 *efficient means possible with the goal of minimizing the impact*
16 *and cost of new transmission needed to meet both reliability needs*
17 *and the renewables portfolio standard procurement requirements.*

18 (2) *Accomplish the requirements of paragraph (1) in a manner*
19 *that respects the ownership, business, and dispatch models for*
20 *transmission facilities owned by electrical corporations, local*
21 *publicly owned electric utilities, joint power agencies, and*
22 *merchant transmission companies.*

23 (c) *The Independent System Operator shall seek any approvals*
24 *from the Federal Energy Regulatory Commission that are*
25 *necessary to accomplish the goals and requirements of this article.*

26 (d) *In order to maintain electric service reliability and to*
27 *minimize the construction of fossil fuel electrical generation*
28 *capacity to support the integration of intermittent renewable*
29 *electrical generation into the electrical grid, by July 1, 2010, the*
30 *Energy Commission shall update its previously conducted studies*
31 *to determine the effective load carrying capacity of wind and solar*
32 *energy resources on the California electrical grid. The commission*
33 *shall use those effective load carrying capacity values in*
34 *establishing the contribution of wind and solar energy resources*
35 *toward meeting the resource adequacy requirements established*
36 *pursuant to Section 380.*

37 (e) *It is the intent of the Legislature that the California Public*
38 *Utilities Commission and the California Energy Commission shall*
39 *implement this article so that it is compatible with, and does not*
40 *preclude achievement of, the combined heat and power system*

1 *electricity generation objective identified by the State Air Resources*
2 *Board in its scoping plan implementing the California Global*
3 *Warming Solutions Act of 2006 (Division 25.5 (commencing with*
4 *Section 38500) of the Health and Safety Code), including*
5 *maintaining existing levels of efficient combined heat and power*
6 *systems and the installation of additional megawatts of efficient*
7 *combined heat and power systems that meet the goals for reducing*
8 *emissions of greenhouse gases provided, however, nothing in this*
9 *provision shall change the definition of renewable electrical*
10 *generation facility. New combined heat and power systems shall*
11 *be sized to meet all or a portion of the eligible customer-generators*
12 *on-site demand.*

13 *SEC. 13. Section 454.5 of the Public Utilities Code is amended*
14 *to read:*

15 454.5. (a) The commission shall specify the allocation of
16 electricity, including quantity, characteristics, and duration of
17 electricity delivery, that the Department of Water Resources shall
18 provide under its power purchase agreements to the customers of
19 each electrical corporation, which shall be reflected in the electrical
20 corporation's proposed procurement plan. Each electrical
21 corporation shall file a proposed procurement plan with the
22 commission not later than 60 days after the commission specifies
23 the allocation of electricity. The proposed procurement plan shall
24 specify the date that the electrical corporation intends to resume
25 procurement of electricity for its retail customers, consistent with
26 its obligation to serve. After the commission's adoption of a
27 procurement plan, the commission shall allow not less than 60
28 days before the electrical corporation resumes procurement
29 pursuant to this section.

30 (b) An electrical corporation's proposed procurement plan shall
31 include, but not be limited to, all of the following:

32 (1) An assessment of the price risk associated with the electrical
33 corporation's portfolio, including any utility-retained generation,
34 existing power purchase and exchange contracts, and proposed
35 contracts or purchases under which an electrical corporation will
36 procure electricity, electricity demand reductions, and
37 electricity-related products and the remaining open position to be
38 served by spot market transactions.

39 (2) A definition of each electricity product, electricity-related
40 product, and procurement related financial product, including

1 support and justification for the product type and amount to be
2 procured under the plan.

3 (3) The duration of the plan.

4 (4) The duration, timing, and range of quantities of each product
5 to be procured.

6 (5) A competitive procurement process under which the
7 electrical corporation may request bids for procurement-related
8 services, including the format and criteria of that procurement
9 process.

10 (6) An incentive mechanism, if any incentive mechanism is
11 proposed, including the type of transactions to be covered by that
12 mechanism, their respective procurement benchmarks, and other
13 parameters needed to determine the sharing of risks and benefits.

14 (7) The upfront standards and criteria by which the acceptability
15 and eligibility for rate recovery of a proposed procurement
16 transaction will be known by the electrical corporation prior to
17 execution of the transaction. This shall include an expedited
18 approval process for the commission's review of proposed contracts
19 and subsequent approval or rejection thereof. The electrical
20 corporation shall propose alternative procurement choices in the
21 event a contract is rejected.

22 (8) Procedures for updating the procurement plan.

23 (9) A showing that the procurement plan will achieve the
24 following:

25 (A) ~~The electrical corporation will~~ *shall*, in order to fulfill its
26 ~~unmet resource needs and in furtherance of Section 701.3, until a~~
27 ~~20 percent renewable resources portfolio is achieved, procure~~
28 ~~resources from eligible renewable energy resources with the goal~~
29 ~~of ensuring that at least an additional 1 percent per year of the~~
30 ~~electricity sold by the electrical corporation is generated from~~
31 ~~renewable energy resources, provided sufficient funds are made~~
32 ~~available pursuant to Sections 399.6 and 399.15, to cover the~~
33 ~~above-market costs for new renewable energy resources in an~~
34 ~~amount sufficient to meet its procurement requirements pursuant~~
35 ~~to the California Renewables Portfolio Standard Program (Article~~
36 ~~16 (commencing with Section 399.11) of Chapter 2.3).~~

37 (B) The electrical corporation will create or maintain a
38 diversified procurement portfolio consisting of both short-term
39 and long-term electricity and electricity-related and demand
40 reduction products.

1 (C) The electrical corporation will first meet its unmet resource
2 needs through all available energy efficiency and demand reduction
3 resources that are cost effective, reliable, and feasible.

4 (10) The electrical corporation's risk management policy,
5 strategy, and practices, including specific measures of price
6 stability.

7 (11) A plan to achieve appropriate increases in diversity of
8 ownership and diversity of fuel supply of nonutility electrical
9 generation.

10 (12) A mechanism for recovery of reasonable administrative
11 costs related to procurement in the generation component of rates.

12 (c) The commission shall review and accept, modify, or reject
13 each electrical corporation's procurement plan. The commission's
14 review shall consider each electrical corporation's individual
15 procurement situation, and shall give strong consideration to that
16 situation in determining which one or more of the features set forth
17 in this subdivision shall apply to that electrical corporation. A
18 procurement plan approved by the commission shall contain one
19 or more of the following features, provided that the commission
20 may not approve a feature or mechanism for an electrical
21 corporation if it finds that the feature or mechanism would impair
22 the restoration of an electrical corporation's creditworthiness or
23 would lead to a deterioration of an electrical corporation's
24 creditworthiness:

25 (1) A competitive procurement process under which the
26 electrical corporation may request bids for procurement-related
27 services. The commission shall specify the format of that
28 procurement process, as well as criteria to ensure that the auction
29 process is open and adequately subscribed. Any purchases made
30 in compliance with the commission-authorized process shall be
31 recovered in the generation component of rates.

32 (2) An incentive mechanism that establishes a procurement
33 benchmark or benchmarks and authorizes the electrical corporation
34 to procure from the market, subject to comparing the electrical
35 corporation's performance to the commission-authorized
36 benchmark or benchmarks. The incentive mechanism shall be
37 clear, achievable, and contain quantifiable objectives and standards.
38 The incentive mechanism shall contain balanced risk and reward
39 incentives that limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of

1 Water Resources. The commission shall determine the schedule
2 for amortizing the overcollection or undercollection in the
3 balancing account to ensure that the 5 percent threshold is not
4 exceeded. After January 1, 2006, this adjustment shall occur when
5 deemed appropriate by the commission consistent with the
6 objectives of this section.

7 (4) Moderate the price risk associated with serving its retail
8 customers, including the price risk embedded in its long-term
9 supply contracts, by authorizing an electrical corporation to enter
10 into financial and other electricity-related product contracts.

11 (5) Provide for just and reasonable rates, with an appropriate
12 balancing of price stability and price level in the electrical
13 corporation's procurement plan.

14 (e) The commission shall provide for the periodic review and
15 prospective modification of an electrical corporation's procurement
16 plan.

17 (f) The commission may engage an independent consultant or
18 advisory service to evaluate risk management and strategy. The
19 reasonable costs of any consultant or advisory service is a
20 reimbursable expense and eligible for funding pursuant to Section
21 631.

22 (g) The commission shall adopt appropriate procedures to ensure
23 the confidentiality of any market sensitive information submitted
24 in an electrical corporation's proposed procurement plan or
25 resulting from or related to its approved procurement plan,
26 including, but not limited to, proposed or executed power purchase
27 agreements, data request responses, or consultant reports, or any
28 combination, provided that the Office of Ratepayer Advocates and
29 other consumer groups that are nonmarket participants shall be
30 provided access to this information under confidentiality
31 procedures authorized by the commission.

32 (h) Nothing in this section alters, modifies, or amends the
33 commission's oversight of affiliate transactions under its rules and
34 decisions or the commission's existing authority to investigate and
35 penalize an electrical corporation's alleged fraudulent activities,
36 or to disallow costs incurred as a result of gross incompetence,
37 fraud, abuse, or similar grounds. Nothing in this section expands,
38 modifies, or limits the State Energy Resources Conservation and
39 Development Commission's existing authority and responsibilities

1 as set forth in Sections 25216, 25216.5, and 25323 of the Public
2 Resources Code.

3 (i) An electrical corporation that serves less than 500,000 electric
4 retail customers within the state may file with the commission a
5 request for exemption from this section, which the commission
6 shall grant upon a showing of good cause.

7 (j) (1) Prior to its approval pursuant to Section 851 of any
8 divestiture of generation assets owned by an electrical corporation
9 on or after the date of enactment of the act adding this section, the
10 commission shall determine the impact of the proposed divestiture
11 on the electrical corporation's procurement rates and shall approve
12 a divestiture only to the extent it finds, taking into account the
13 effect of the divestiture on procurement rates, that the divestiture
14 is in the public interest and will result in net ratepayer benefits.

15 (2) Any electrical corporation's procurement necessitated as a
16 result of the divestiture of generation assets on or after the effective
17 date of the act adding this subdivision shall be subject to the
18 mechanisms and procedures set forth in this section only if its
19 actual cost is less than the recent historical cost of the divested
20 generation assets.

21 (3) Notwithstanding paragraph (2), the commission may deem
22 proposed procurement eligible to use the procedures in this section
23 upon its approval of asset divestiture pursuant to Section 851.

24 *SEC. 14. Section 1005.1 is added to the Public Utilities Code,*
25 *to read:*

26 *1005.1. (a) The commission shall issue a decision on an*
27 *application for a certificate within 18 months of the date of filing*
28 *of the completed application, when all of the following are true:*

29 *(1) The application is for a certificate for building or upgrading*
30 *an electrical transmission line that the commission finds necessary*
31 *to provide transmission to load centers for electricity generated*
32 *in a high priority renewable energy zone or is reasonably necessary*
33 *to facilitate achievement of the renewables portfolio standard*
34 *established in Article 16 (commencing with Section 399.11) of*
35 *Chapter 2.3.*

36 *(2) The commission has considered all of the following:*

37 *(A) The utilization of rights-of-way by upgrading existing*
38 *transmission facilities instead of building new transmission*
39 *facilities, where technically and economically justifiable.*

1 (B) The expansion of existing rights-of-way, if technically and
2 economically feasible, when construction of new transmission lines
3 is required.

4 (C) The creation of new rights-of-way when justified by
5 environmental, technical, and economic reasons.

6 (D) The availability of cost-effective alternatives to transmission,
7 such as energy efficiency measures and distributed generation.

8 (3) The commission has not expressly found any of the following:

9 (A) That the investment is not reasonable and necessary to
10 maintain or enhance reliability of the transmission grid.

11 (B) That the building or upgrading of the electrical transmission
12 line will not maintain or enhance efficient use of the transmission
13 grid.

14 (C) That the transmission line fails to meet other applicable
15 standards and requirements for approval and construction.

16 (b) An extension of time may be granted by the commission if
17 it finds the extension is necessary for completion of review pursuant
18 to the California Environmental Quality Act (Division 13
19 commencing with Section 21000) of the Public Resources Code).

20 SEC. 15. This bill shall only become operative if this bill and
21 SB 14 are both enacted and become effective on or before January
22 1, 2010.

23 SEC. 16. No reimbursement is required by this act pursuant
24 to Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.

32
33
34 **All matter omitted in this version of the bill**
35 **appears in the bill as amended in the**
36 **Senate, June 23, 2009 (JR11)**
37